

KEVIN DITTRICH
MC FARLIN vs WORD ENTERPRISES

December 05, 2017

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<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 CHAD MCFARLIN, individually</p> <p>6 and on behalf of all</p> <p>7 similarly situated persons,</p> <p>8</p> <p>9 Plaintiffs,</p> <p>10 vs. Civil Action No:</p> <p>11 2:16-cv-12536</p> <p>12 HON. GERSHWIN A. DRAIN</p> <p>13 THE WORD ENTERPRISES, LLC,</p> <p>14 et al,</p> <p>15</p> <p>16 Defendants.</p> <p>17 _____/</p> <p>18</p> <p>19 The Deposition of KEVIN DITTRICH was taken</p> <p>20 before me, Barbara Phillips, (CER #5598) and Notary</p> <p>21 Public, in and for the County of Washtenaw, State of</p> <p>22 Michigan, at 221 N. Main Street, Suite 300, Ann</p> <p>23 Arbor, Michigan, on Tuesday, December 5, 2017, at</p> <p>24 1:00 p.m.</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 WITNESS: PAGE:</p> <p>3 K E V I N D I T T R I C H</p> <p>4</p> <p>5 Examination by Mr. Blanchard 6</p> <p>6</p> <p>7</p> <p>8 * * * * *</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11 EXHIBITS: PAGE:</p> <p>12</p> <p>13 Deposition Exhibit No. 16 4</p> <p>14 Deposition Exhibit No. 17 6</p> <p>15 Deposition Exhibit No. 18 9</p> <p>16 Deposition Exhibit No. 19 14</p> <p>17 Deposition Exhibit No. 20 18</p> <p>18 Deposition Exhibit No. 21 19</p> <p>19 Deposition Exhibit No. 22 24</p> <p>20 Deposition Exhibit No. 23 25</p> <p>21 Deposition Exhibit No. 24 26</p> <p>22</p> <p>23</p> <p>24 * * * * *</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 DAVID M. BLANCHARD (P67190)</p> <p>4 221 N. Main Street, Suite 300</p> <p>5 Ann Arbor, Michigan 48104</p> <p>6 734-929-4313</p> <p>7</p> <p>8 Appearing on behalf of the Plaintiffs.</p> <p>9</p> <p>10</p> <p>11 JEFFREY S. THEUER (P44161)</p> <p>12 124 West Allegan Street, Suite 700</p> <p>13 Lansing, Michigan 48933</p> <p>14 517-482-2400</p> <p>15</p> <p>16 Appearing on behalf of the Defendants.</p> <p>17</p> <p>18 * * * * *</p> <p>19</p> <p>20 REPORTED BY: Barbara Phillips,</p> <p>21 (CER #5598)</p> <p>22 and Notary Public.</p> <p>23</p> <p>24</p> <p>25 ALSO PRESENT: Michele Follman</p>	<p style="text-align: right;">Page 4</p> <p>1 (Deposition Exhibit No. 16</p> <p>2 was marked for identification.)</p> <p>3</p> <p>4 Ann Arbor, Michigan</p> <p>5 Tuesday, December 5, 2017</p> <p>6 12:55 p.m.</p> <p>7</p> <p>8 * * * * *</p> <p>9</p> <p>10 K E V I N D I T T R I C H</p> <p>11 after having been first duly sworn to tell the</p> <p>12 truth, the whole truth, and nothing but the</p> <p>13 truth, was examined and testified upon his</p> <p>14 oath as follows:</p> <p>15 MR. BLANCHARD: Hello, Mr. Dittrich.</p> <p>16 THE WITNESS: Hello.</p> <p>17 MR. BLANCHARD: Am I pronouncing your</p> <p>18 name correctly?</p> <p>19 THE WITNESS: Yes.</p> <p>20 MR. BLANCHARD: Great. It's the first</p> <p>21 time we've met here today, isn't it?</p> <p>22 THE WITNESS: Yes.</p> <p>23 MR. BLANCHARD: But this is actually the</p> <p>24 adjournment of the previously scheduled</p> <p>25 deposition that we're continuing. You</p>

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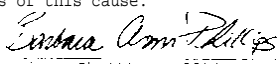

<p style="text-align: right;">Page 9</p> <p>1 specifically.</p> <p>2 Q. So when you're taking that subminimum wage from</p> <p>3 approximately November of 2014 through the present</p> <p>4 date for the defendant companies, as part of that</p> <p>5 the defendant companies posted this exhibit we</p> <p>6 looked at before; is that right?</p> <p>7 MR. BLANCHARD: I'll show it to you again, what</p> <p>8 we're marking as Exhibit 18.</p> <p>9 MR. THEUER: This is 18?</p> <p>10 MR. BLANCHARD: 18.</p> <p>11 MR. THEUER: What was the affidavit?</p> <p>12 MR. BLANCHARD: 17. And the dep notice was 16.</p> <p>13 MR. THEUER: Thank you.</p> <p>14 MR. BLANCHARD: I should have gone through</p> <p>15 that.</p> <p>16 (Deposition Exhibit No. 18</p> <p>17 was marked for identification.)</p> <p>18 BY MR. BLANCHARD:</p> <p>19 Q. Are you ready?</p> <p>20 A. Yeah.</p> <p>21 Q. So we looked at it before. Again, I'm not trying to</p> <p>22 repeat myself, but I just wanted to verify. I don't</p> <p>23 know if you know off the top of your head when this</p> <p>24 particular notice was used?</p> <p>25 A. I do not.</p>	<p style="text-align: right;">Page 11</p> <p>1 the employee anything more than getting them up to</p> <p>2 the base minimum wage; is that right?</p> <p>3 A. To my understanding, yeah.</p> <p>4 MR. THEUER: I'll object to the form of the</p> <p>5 question just because the base minimum wage is not</p> <p>6 the same as what you were using in the prior</p> <p>7 question. Is there a difference between the base</p> <p>8 minimum and minimum wage under the statute?</p> <p>9 MR. BLANCHARD: No. I was possibly being</p> <p>10 inarticulate.</p> <p>11 BY MR. BLANCHARD:</p> <p>12 Q. So let me just replace that with 8.15. At the time</p> <p>13 the minimum wage was 8.15 the company was not</p> <p>14 pledging to pay anything more or promising to pay</p> <p>15 anything more than the amount of money it would take</p> <p>16 to get the driver to 8.15?</p> <p>17 A. To my understanding.</p> <p>18 Q. That's a yes?</p> <p>19 A. Yes.</p> <p>20 Q. And then is it true at times after that when the</p> <p>21 minimum wage changed to -- was it 8.45 at the time</p> <p>22 or something like that? It changed to different</p> <p>23 amounts. The new obligation of the company was to</p> <p>24 make sure that the subminimum wage plus any tips</p> <p>25 that were received by the driver at least exceeded</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. It would be, of course, when the minimum wage went</p> <p>2 to 8.15, right?</p> <p>3 A. Correct.</p> <p>4 Q. And then the minimum wage was changed -- was it once</p> <p>5 or twice since then?</p> <p>6 A. Two, maybe three times since then.</p> <p>7 Q. And it's going up in January, right?</p> <p>8 A. Right.</p> <p>9 Q. Each time that it's changed do you know if a new one</p> <p>10 of these notice postings has been created or</p> <p>11 generated?</p> <p>12 A. I do not know that.</p> <p>13 Q. Because I've only seen this one with 8.15. I</p> <p>14 haven't seen other numbers, so I was just curious if</p> <p>15 there were other ones. I will again follow-up with</p> <p>16 Ms. Follman on that. So this notice is notifying</p> <p>17 employees that you're taking the tip credit and as</p> <p>18 part of that tip credit if their compensation falls</p> <p>19 below -- and this is at the time when it was 8.15.</p> <p>20 If their compensation falls below the 8.15 minimum</p> <p>21 wage that the company would be responsible for</p> <p>22 making up the difference so they'd get to the</p> <p>23 minimum wage; is that right?</p> <p>24 A. Correct.</p> <p>25 Q. The company wasn't responsible or pledging to pay</p>	<p style="text-align: right;">Page 12</p> <p>1 that minimum wage amount?</p> <p>2 A. Correct.</p> <p>3 Q. And at the time it was various amounts or whatever</p> <p>4 it was at the time?</p> <p>5 MR. THEUER: I'll object to the form of the</p> <p>6 question just because you were referring to the term</p> <p>7 subminimum wage. If what you mean is the cash wage,</p> <p>8 the cash wage that is allowed under the Federal</p> <p>9 Labor Standards Act for tipped employees then maybe</p> <p>10 we should clarify that. Is that what you mean by</p> <p>11 the subminimum wage?</p> <p>12 MR. BLANCHARD: Yes, that is correct.</p> <p>13 BY MR. BLANCHARD:</p> <p>14 Q. So were you a part of the decision that was made to</p> <p>15 go from a full minimum wage to the tip credit</p> <p>16 minimum wage in November of 2014?</p> <p>17 A. Yes.</p> <p>18 Q. Who else was involved in that decision for your</p> <p>19 defendant stores to do that?</p> <p>20 A. It would have been myself, Michele, and then another</p> <p>21 gentleman, Brad Follman.</p> <p>22 Q. And what did you review or consult to decide to do</p> <p>23 that?</p> <p>24 A. The industry average. We do what we call a</p> <p>25 competitive analysis so we called on Domino's Pizza,</p>

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1 STATE OF MICHIGAN)
) ss.
2 COUNTY OF OAKLAND)
3 CERTIFICATE OF NOTARY PUBLIC
 AND COURT REPORTER
4
5 I, BARBARA PHILLIPS, Notary Public in
6 and for the County of Oakland, State of
7 Michigan, do hereby certify that the witness
8 whose attached deposition was taken before me
9 was first duly sworn to testify to the truth,
10 the whole truth and nothing but the truth;
11 that thereupon the foregoing questions were
12 asked and the foregoing answers were made by
13 the witness, which were duly recorded by me
14 electronically; and were reduced to
15 typewritten form by computer-aided
16 transcription under my direction; and that
17 this is, to the best of my knowledge and
18 belief, a true and correct transcript of my
19 electronic records so taken.
20 I further certify that I am neither of
21 counsel to either party, nor interested in the
22 events of this cause.
23  
24 Barbara Phillips, #5598
 Notary Public, Oakland County, MI
25 My Commission Expires: 11-27-2018